VIRGINIA LAW REGISTER

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Juries: Selection in Civil Cases—Application for Special Jury from Another County or City.

The question as to the disqualification of jurors and the method of selection has seldom been before our Appellate Court in civil cases. The opinion of the court, therefore, in *Rust* v. *Reid, &c.*, decided Nov. 11th, 1918, becomes of great importance and is of exceeding interest.

The will of one Fred G. Rust, of Staunton, Virginia, was attacked on the ground of his insanity. An issue *devisavit vel non* was made up and tried in the Corporation Court of the city of Staunton. At the first trial there was a disagreement and the jury was discharged. At the second trial a jury found that the testator was sane and an appeal was taken from the overruling of a motion to set aside the verdict upon several grounds. The main point insisted upon in the Supreme Court was that the contestants did not have a fair trial before an impartial jury upon the issues joined. An inspection of the evidence certainly shows that an impartial jury was not selected and whilst no one can question the honesty and integrity of any of the jury it seems perfectly plain that several of the jurors, to say the least of it, did "not stand indifferent in the cause." Rust, a very pathetic figure and well known in Staunton, had spent many years of his life in the Hospital for the Insane at Staunton. After his discharge he remained in that city and was well known to nearly every juror. It can therefore be well seen that it was almost impossible for

NOTE: Our Editor-in-Chief sailed for England on important legal business on January 22nd. The March number of the Register will therefore be taken care of in the Editorial Line by the Associate Editors. Judge Duke expects to return early in March.

the persons composing the jury not to have known him and formed some opinion as to his condition.

The Supreme Court set aside the verdict and remanded the cause for a new trial on the ground that there was not the impartial jury required by law to try the case. A motion was made in the lower court for a jury from another county or city on the ground that an impartial jury could not be obtained in Staunton. This application was refused and this refusal assigned as error. The Supreme Court held that this refusal did not constitute error, as the Court had no power to order a jury from another county or city, as section 4024 of the Code applies only in criminal cases, as is evident by an examination of the section, which in its very terms applies only to juries in criminal cases. The only remedy —if an impartial jury could not be obtained in a civil case —would be to move for a change of venue. It is unfortunate that this section should not have been made to apply to civil as well as criminal cases. The great expense and inconvenience of a change of venue will often act as a deterrent in a case where an impartial jury of the vicinage cannot be obtained and we think it would be wise policy for a future Legislature to amend the section so as to make it apply to civil as well as criminal cases. It will not be often the case that such action is necessary and a large discretion is vested in the trial court which would prevent any abuse of this course. Indeed, in the instant case the Supreme Court holds that the application to the trial court for a special jury was not one as to which the refusal would be error unless it was made to appear that this discretion vested in that Court had been improperly exercised.

The opinion of the Court, delivered by Judge Burks, makes a very clear statement as to the weight which should be given by the trial Court to the opinion formed or expressed by a person called to serve as a juryman and will prove a valuable guide to those Courts hereafter both in civil and criminal cases.

Interstate Shipments of Liquor.

We are very much surprised that any one is surprised at the decision of the Supreme Court of the United States in upholding the Reed "bone dry" law. The surprising thing is that two justices dissented. We had supposed that if any one point had been settled by the Supreme Court, it was that when Congress exerted its authority over any interstate matter within its control, any State Law in conflict had to yield. The State (West Va.) Law permitted persons to bring in limited amounts of liquor for their own personal use. The Reed law absolutely prohibited any interstate shipment of liquor except for medicinal, etc., purposes. The State Law being in conflict with the Federal Law is therefore nullified and no more quarts are allowed to enter. Of course this is now the Law. That it is good law, reasonable law, law which the Fathers of the Constitution ever dreamed could be upheld, the Editor in Chief does not believe. It is one more nail in the coffin of that corpse of States Rights for which the ninth of April, 1865, was responsible. Why keep up the farce? Let us at once gracefully admit that the States have no more rights than the Southern States had when they were Military Districts under the rule of the scalawag and carpet-bagger and quit bothering the Supreme Court with such archaic matters as the Rights of Sovereign States—"Sovereign!" God save the mark.

And how foolish ever to question the absolute and unquestioned right of the people to legislate in regard to liquor in any way they will. What's the constitution got to do with it when the sacred cause of prohibition is involved. A fig for constitutions, for due legal process, for the absurd safeguards the laws have heretofore thrown around a man accused of crime. Why not in view of the innumerable decisions as to indictments, trial, etc., of those desperate fiends and outlaws who violate prohibition laws pass a statute that henceforth every man accused of violating any prohibition law shall be required to prove himself innocent? We have very little doubt such an act would be held unconstitutional. Torture might be reinstated as a method of obtaining testimony and the use of the stomach pump allowed to obtain proof that a man from Baltimore was illegally transporting liquor in his

stomach into dry territory? For the law prohibits any shipment and the stomach is just as much a container as a suit case.

Mr. Justice Day delivered the opinion of the majority and said:

> "In view of the authority of the Congress over the subject matter and the enactment of previous legislation embodied in the Wilson and Webb-Kenyon laws, we have no question that Congress enacted this statute because of its belief that in States prohibiting the sale and manufacture of intoxicating liquors for beverage purposes the facilities of interstate commerce should be denied to the introduction of intoxicants by means of interstate commerce, except for the limited purposes permitted in the statute, which have nothing to do with liquor used as a beverage.
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> "That the State saw fit to permit the introduction of liquor for personal use in limited quantity in nowise interferes with the authority of Congress, acting under its plenary powers over interstate commerce, to make the prohibition against interstate shipment contained in this act. It may exert its authority as in the Wilson and Webb-Kenyon acts, having in view the laws of the State, but it has a power of its own, which in this instance it has exerted in accordance with its view of public policy.
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> "When Congress exerts its authority in a matter within its control, State laws must give way, in view of the regulation of the subject matter by the superior power conferred by the Constitution."

Mr. Justice McReynolds of Texas, that driest of the dry states—well for him that his position does not depend upon Texas—dissented, and Mr. Justice Clark also a Southerner dissented.

Mr. Justice McReynolds said:

> "The Reed amendment in a proper sense regulates interstate commerce, but is a direct intermeddling with the State's internal affairs. Whether regarded as reward or punishment for wisdom or folly in enacting limited prohibition, the amendment so construed, I think goes beyond Federal powers; and to hold otherwise opens possibilities for partial and sectional legislation which may destroy proper control of their own affairs by the several States.
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> "If Congress may deny liquor to those who live in a State simply because its manufacture is not permitted there, why may not this be done for any suggested reason, namely, because the roads are bad or men are hanged for murder or coals are

> dug? Where is the limit? The Reed amendment as now construed is a congressional fiat imposing more complete prohibition wherever the State has assumed to prevent manufacture or sale of intoxicants."

No one in our judgment can successfully answer the argument given in the dissenting opinion. But what boots it? Mary Lamb's only known pun was in answer to the old saw, "What is good for a bootless bean?" "Why, a shoeless pea, I suppose." So he must lack understanding and stand with his shoes from off his feet who dares to question any decision upholding any prohibition law.

We are surprised and shocked at McReynolds and Clark as much as we may agree with them.